

### **REMARKS**

This responds to the Final Office Action dated January 22, 2010.

Claims 1, 30-33, 35-37, 39, and 42-46 are hereby amended. Claims 4, 5 and 29 are hereby canceled. As a result, claims 1, 6-9, 30-33 and 35-46 remain pending in this application.

#### **Drawing Rejections/Objections**

The Examiner objected to the inclusion of reference numbers “50” and “120” in Figures 2 and 7, respectively, without any corresponding use of the reference numbers in the text of the specification. However, Applicants previously requested that the specification be amended to include the reference numbers “50” and “120”. As such, Applicants believe that the objection has been overcome. If not, Applicants hereby incorporate herein the request to amend the Specification, as set forth in the Response filed on October 27, 2009.

The Examiner also objected to the lack of a reference number “10” in Figure 8 to correspond with the reference to “system 10” of Figure 8. The system with reference number 10 is in fact shown in Figure 1. Accordingly, Applicants have hereby amended the specification (first full paragraph of page 14) to make it clear that the system with reference number 10 is shown in Figure 1, not Figure 8. Applicants believe the amendment to the specification overcomes the objection. Reconsideration and withdrawal of the objection is respectfully requested.

#### **The Rejections of Claims Under § 112**

Claims 1, 4-9, 29-33, and 35-46 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Examiner states that Applicants’ specification “appears to be directed to a ‘falling price schedule’ and not directed to ‘a variable price schedule’ [as] ‘[a] variable price schedule’ is only mentioned briefly in the Specification.”

Applicants respectfully point out that the test for enablement is not whether or not the terms used in the claims appear verbatim in the text of the specification, but whether a skilled artisan, having read Applicants’ specification, would be enabled to make, or use, the claimed subject matter. Applicants submit that a skilled artisan, having read Applicants’ specification

would have no trouble whatsoever understanding how to make and use the claimed invention. As the specification refers to both falling and variable price schedules, a skilled artisan would understand these terms, and either is validly claimed. Nonetheless, in the interest of advancing the application to allowance, Applicants have amended the claims to recite a “falling price schedule.” Reconsideration and withdrawal of the rejection is requested.

Claim 1 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicants regard as the invention. Specifically, the Examiner has stated that “time period” is varied, broad, and indefinite. Applicants disagree. The term “specified time period” does not render the claim indefinite or unambiguous, as it would be extremely easy to determine whether a schedule includes an entry that specifies a time period.

Additionally, the Examiner has indicated that claim 1 refers to a “first network”, and therefore claim 1 should reference a second network. Applicants first point out that no such requirement exists, and that the use of the term “first network” in claim 1 can distinguish from a claimed “second network” when the second network is recited, not in claim 1, but a claim dependent upon claim 1. In any case, as amended, claim 1 references a second network. Applicants kindly request that the Examiner reconsider and withdraw the rejection.

*Allowable Subject Matter*

The Examiner has indicated that claim 1 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112 set forth in the Office Action, and amended to incorporate the subject matter of claims 4, 5 and 29. Applicants have complied, and respectfully request that the amendments made herein be considered and the claims allowed.

**CONCLUSION**

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (408) 660-2014 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop RCE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 24th day of May, 2010.

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